could well impair AT&T's ability to conduct its own business; thus, AT&T has every incentive to abide by its obligations and to cooperate with Verizon in the detection and prevention of any interference.

Q. WHAT IS WRONG WITH VERIZON'S PROPOSED REMEDY?

A. It would enable Verizon to discontinue – summarily and unilaterally – AT&T's access to Verizon's OSS within ten days of its notification to AT&T alleging that, in Verizon's sole judgment, AT&T had committed a breach of its OSS contractual obligations, without any regard to the alleged severity of the breach or of any impact on Verizon's OSS. Such a remedy is excessively punitive and unwarranted.

ISSUE V.10	Must Verizon offer vertical features available for resale on a stand-alone basis?

Q. SHOULD VERIZON MAKE ITS VERTICAL FEATURES AVAILABLE FOR RESALE?

A. Yes, indeed it must do so. Under § 251(c)(4) of the Telecommunications Act, Verizon is required to make available for resale any retail telecommunications service. The Commission has also made it clear that ILECs such as Verizon are prohibited from imposing discriminatory conditions on the resale of retail services, finding that "resale restrictions are presumptively unreasonable."[7] The vertical features offered by Verizon are, without question,

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[6] *See, e.g.,* Schedule 11.6, section 3 of AT&T's proposed interconnection agreement, Attachment B to its petition.

[7] First Report and Order, CC Docket 96-98, Aug. 8, 1996, ¶939.

"telecommunications services" within the meaning of the Telecommunications Act, and thus properly subject to general resale obligations imposed by the Act.[8]

Q. DOES VERIZON CONTEND THAT THEY ARE NOT?

A. No, but Verizon maintains that they are not offered at retail on, as they put it, a stand-alone basis.[9] But that is inconsistent with the manner in which Verizon offers these vertical features pursuant to tariffs for telecommunications services.[10] Verizon thus bears the burden under the FCC's implementing regulations of proving that the restriction it seeks to impose in the contract on the resale of vertical features — *i.e.,* that they only will be resold with Verizon's dial tone line service — is both reasonable and narrowly tailored.[11]

Q. IS IT REASONABLE FOR VERIZON TO REQUIRE RESALE OF ITS VERTICAL FEATURES ONLY IN CONNECTION WITH RESALE OF ITS DIAL-TONE?

A. I do not believe that it is. It is not disputed that Verizon's dial tone line service is available for purchase by retail customers on a stand-alone basis — that is, without the purchase of Verizon's monopoly vertical features.[12] Since retail customers can purchase Verizon's dial tone service without purchasing

8 *See e.g.,* Application By Sprint Communications Company, L.P. for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996, Public Utilities Commission of California, Application 00-05-053, Opinion (Oct. 5, 2000) (the "California Resale Opinion"), at 11.

9 *See* Verizon Response to Unresolved Issues, at 196 (Issue V-10).

10 *See* Verizon-VA Tariff No. 203, General Service, Custom Calling Features. *See also,* New York Telephone Company Tariff P.S.C. No. 900, § 2.

11 *See* 47 C.F.R. § 51.613(b).

Verizon's monopoly vertical features, Verizon's insistence that AT&T —as a reseller — purchase both local dial tone and vertical features can not withstand scrutiny. It is patently unreasonable — both under general principles of competition and under § 251(c)(4) — for Verizon to require AT&T to purchase for resale services that AT&T does not want (dial tone) as a condition of purchase for resale of monopoly services that AT&T does want (vertical features). Indeed, this is precisely the holding of the California Public Utilities Commission.[13] Moreover, as other state commissions have found, there can be no claim of technical infeasibility, because there is no technical reason that the same carrier has to provide the local dial tone in order to provide vertical features.[14] In fact Verizon acknowledges that it offers its vertical features to Enhanced Service Providers for resale.[15]

Q. DOES VERIZON CHARGE CUSTOMERS SEPARATELY FOR ITS MONOPOLY VERTICAL FEATURES?

A. Yes, and this only reinforces the conclusion that Verizon is required to make vertical features available for resale on stand-alone basis pursuant to § 251(c)(4). Since vertical features are not included in the rate for dial tone (*i.e.,* basic local

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[12] *See* Verizon-VA Tariff No. 202, Local Exchange Service.

[13] California Resale Opinion, at 11. ("We concur in the [ALJ's] determination that Section 251(c)(4) requires the resale of vertical features, without purchase of the associated dial tone. Vertical features meet the Act's requirement of services offered at retail to end-user customers who are not telecommunications carriers.") Verizon calls this decision "wrong" (Verizon Response to Unresolved Issues at n. 275, p. 198) and refers to a decision of the Massachusetts DTE in an arbitration with Sprint.

[14] *See e.g.,* Complaint By AT&T Communications of the Southwest, Inc. Regarding Tariff Control Number 21311, Pricing Flexibility-Essential Office Packages, Texas P.U.C. Docket Nos. 21425 and 21475, SOAH Docket No. 473-99-2071, Order (issued December 19, 2000) (the "Texas Resale Order"), at 7.

[15] *See* Verizon Response to Unresolved Issues at 197.

service),[16] it is clear that Verizon is not being required to disaggregate a genuinely bundled service, but is instead simply being asked to make available for resale a retail service that is listed and priced separately in Verizon's retail tariffs.[17]

ISSUE VII-1	Should AT&T be allowed to circumvent over a year's worth of negotiations by inserting language on Network Architecture issues that was never discussed by the Parties?

ISSUE VII-26	Should Verizon be compensated when its personnel arrive to perform services for an AT&T customer and are unable to gain access to the premises?

Q. DO YOU AGREE THAT AT&T IS, AS VERIZON ASSERTS, TRYING TO CIRCUMVENT NEGOTIATIONS ON NETWORK ARCHITECTURE?

A. Absolutely not. Verizon's Supplemental Statement suggests, wrongly, that AT&T has somehow changed its position on transport obligations for interconnection traffic because it has submitted for its proposed contract language that does not use Verizon's proposed term "IP".[18] But AT&T's position concerning network interconnection has been consistent throughout the negotiations, and AT&T has no more attempted to circumvent negotiations by proposing the terms that it prefers in this particular section of the contract when the Parties have not come to agreement than Verizon is when it engages in the same conduct with respect to other sections. While AT&T attempted to negotiate

16 *See* Verizon-VA tariff No. 203, General Service, Custom Calling Features; *see also,* New York Telephone Company Tariff P.S.C. No. 900, § 2.

17 *See* Application By Sprint Communications Company, L.P. for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996, Public Utilities Commission of California, Application 00-05-053, Final Arbitrator's Report (Sept. 5, 2000), at 25; California Resale Opinion, at 11.

in good faith language that included Verizon's term "IP" (a term which never appears in the Act), it is my understanding that neither Party has changed its fundamental position on where each party's respective "IP" must be located, a fact confirmed by the differing draft Interconnection Agreements filed in this proceeding. As Mr. Talbott explains, although AT&T has been willing to include the term "IP" as an accommodation to Verizon, AT&T would not, and will not, agree to apply that term in a manner that abrogates AT&T rights under the Act, as Verizon would have it do. AT&T has never wavered from that stance in any of its discussions with Verizon and has not circumvented any negotiation.

Q. DOES AT&T DISPUTE THAT VERIZON SHOULD BE COMPENSATED WHEN ITS TECHNICIANS ARE UNABLE TO GAIN ACCESS TO AN AT&T CUSTOMER PREMISES WHEN THEY ARIVE TO EPRFORM SERVICE FOR SUCH CUSTOMER?

A. Not at all. The only dispute here was how to reflect in the contract what the appropriate charge should be. Verizon has proposed that the charge be calculated as "the sum of the Applicable Service Order charge and the Premises Visit Charge as specified in Verizon's retail tariff." That seemed to AT&T to recover more than an appropriate amount for something less than an equivalent effort when access to the premises is obtained and work is performed. While AT&T and Verizon have not yet been able to conclude negotiation of the appropriate rate, Verizon asserts that it is necessary to adopt its terms to "avoid uncertainty."[19] Avoidance of uncertainty is surely advisable, but so is avoidance of double

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[18] *See* Verizon Supplemental Statement of Unresolved Issues, at 27 (Issue VII-1).

[19] See Verizon Supplemental Statement of Unresolved Issues, at 53 (Issue VII-26).

recovery. The appropriate rate – one that reflects the lesser amount of effort when no work is performed – should be included.

What are the appropriate terms and conditions to comprehensively implement the Commission's ISP Remand Order?

I.5.a. How should Verizon and AT&T calculate whether traffic exceeds a 3:1 ratio of terminating to originating traffic?

I.5.b. How should Verizon and AT&T implement the rate caps for ISP-bound traffic?

I.5.c. How should Verizon and AT&T calculate the growth cap on the total number of compensable ISP-bound traffic minutes?

I.5.d. How should the parties implement a Verizon offer to exchange all traffic subject to section 251(b)(5) at the rate mandated by the FCC for terminating ISP-bound traffic?

I.5.e. What mechanisms should the parties utilize to implement, in an expeditious fashion, changes resulting from any successful legal appeals of the Commission's ISP Remand Order?

Q. HOW SHOULD THE PARTIES REFLECT IN THEIR INTERCONNECTION AGREEMENT THE TERMS AND CONDITIONS NECESSARY TO IMPLEMENT THE COMMISSION'S *ISP REMAND ORDER*?

A. By adopting the language that AT&T is proposing, which is attached to this affidavit as Exhibit A.

Q. WHY ARE THESE TERMS APPROPRIATE FOR INCLUSION IN THE AGREEMENT?

A. Because the *ISP Remand Order* raised a number of critical implementation issues concerning the three-year transitional intercarrier compensation scheme for ISP-bound traffic that need to be addressed. AT&T's proposed contract language addresses these complex issues in an unambiguous manner. Among other things, AT&T proposes mechanisms for: calculating the amount of ISP-bound traffic under the Commission's 3:1 ratio; determining appropriate growth caps and rate caps; implementing any Verizon offer to offer exchange all traffic subject to section 251(b)(5) at the rate mandated by the FCC for terminating ISP-bound traffic; and adopting changes resulting from successful legal appeals of the *ISP Remand Order*. AT&T's proposed language will allow AT&T and Verizon to implement this new intercarrier compensation regime in an expeditious manner.

Q. HOW DOES AT&T PROPOSE TO IDENTIFY ISP-BOUND TRAFFIC?

A. AT&T suggests that all local traffic that is terminated by one party for the other party within any calendar quarter in excess of an amount (measured by total minutes of use) that is three times the traffic that is terminated by the other party be conclusively defined as ISP-bound Traffic. All other local traffic that is exchanged between the parties would be conclusively defined as traffic that would be considered local. See Exhibit A, section 2.1.

Q. HOW DOES AT&T PROPOSE TO IMPLEMENT THE GROWTH CAPS ON ISP-BOUND TRAFFIC THAT THE COMMISSION ADOPTED?

A. The precise formula by which AT&T suggests the growth caps be calculated is stated in Exhibit A, section 2.3. It involves calculating an "ISP-bound Annualized Traffic Cap" for the year 2001 and deriving the compensable amount of ISP-bound traffic from that cap.

Q. WHY DOES AT&T PROPOSE THE PARTICULAR METHOD OF BILLING THIS TRAFFIC THAT IT DOES?

A. In order to avoid having to repeatedly revise bills retroactively to adjust for data that is not available until after the bills will have been rendered. Thus AT&T proposes that factors be established based on traffic exchanged in the preceding calendar quarter. See Exhibit A, § 2.4. This approach is one familiar to the parties as it is employed today in deriving factors for both local usage (PLUs) and non-local usage (PIUs) to facilitate billing.

Unbundled Switching Rate Design

Q. WHAT RATE DESIGN FOR UNBUNDLED SWITCHING DOES AT&T RECOMMEND?

A. AT&T recommends that Verizon continue to assess switching charges using the same rate design that is in place today. Specifically, AT&T recommends that Verizon maintain a separate fixed monthly port charge to recover the non-traffic sensitive switch costs identified by Mr. Pitkin and discussed by Ms. Pitts and Ms. Murray, as well as a per-minute usage charge to recover the traffic sensitive costs also discussed by the same witnesses. This is the same rate design the Commission first established in its 1996 Local Competition Order and adopted by nearly every state in the country.

Q. WHAT PRINCIPLES SHOULD BE FOLLOWED WHEN DETERMINING RATE DESIGN?

A. Rate design should structure prices to most closely reflect underlying forward-looking economic costs. The rate design should be stable and impose minimal administrative and auditing burdens on the parties. The rate structure I recommend accomplishes those goals, which, I suppose, is an obvious fact given that it has been in place across the country for five years.

Q. WORLDCOM HAS RECOMMENDED THE COMMISSION ADOPT A FLAT RATED CHARGE TO RECOVER ALL SWITCHING COSTS, BOTH TRAFFIC SENSITIVE AND NON-TRAFFIC SENSITIVE. DOES AT&T SUPPORT THAT OPTION?

A. No. Worldcom's flat rated switching rate design should not be implemented if it is in lieu of the current per-minutes-of-use rate design. For one thing, the proposal does not properly align rates and costs. Moreover, AT&T, and certainly other carriers as well, have established (or are establishing) business plans based on the current rate design which may be subject to change if the current rate design were eliminated.

AT&T would not object, however, if the Commission implemented Worldcom's proposal as an alternative rate design, offered in addition to, not in lieu of, the traditional port-and-usage charge structure.

If the Commission decides to make a flat rate option available, it should require that each carrier elect one option for all of the switching that it purchases. Otherwise, a carrier would have an incentive to purchase the flat rate option for high volume customers and the more traditional port-usage based option for lower volume customers. That obviously would not be fair or appropriate.

ISSUE V.4 Should all calls originating and terminating within a LATA be subject to the same compensation arrangements without regard to end-user classification or type of traffic?

Q. PLEASE BRIEFLY EXPLAIN AT&T'S PROPOSAL TO SETTLE ALL INTRALATA CALLING UNDER A UNIFIED COMPENSATION REGIME.

A. Under AT&T's proposal, all intraLATA and local calls originated by AT&T customers that Verizon subsequently terminates on its own network (or hands off to another party for termination) should be subject to reciprocal compensation arrangements between AT&T and Verizon. Likewise, any intraLATA and local calls delivered by Verizon to AT&T customers that are originated by Verizon customers or are originated by third parties but delivered by Verizon should also be covered by reciprocal compensation.

Q. PLEASE EXPLAIN WHY SUCH A COMPENSATION ARRANGEMENT ENSURES FAIR AND EQUITABLE COMPENSATION FOR ALL INTRALATA CALLS.

A. The different rates or compensation schemes for local and toll traffic, and/or for voice and data traffic, are not supported by differences in underlying costs of providing these services. The same facilities are used to complete toll calls as are used to complete local calls. Yet, Verizon continues to charge different rates to competing carriers, depending on whether the call is characterized as "local" or "toll."

Q. HAS THE COMMISSION RECOGNIZED THE DESIREABILITY OF MOVING TOWARD A UNIFIED COMPENSATION REGIME?

A. Yes. Artificial discrepancies in compensation where costs are the same leads to economic inefficiencies and adverse effects on competition, as the Commission has recognized in instituting the *Unified Intercarrier Compensation Regime* rulemaking.[20] Chairman Powell, in his Separate Statement, stated that:

> As all regulators and businesses know, however, the rates for interconnecting with the phone network vary depending on the type of company that is doing the interconnecting. In a competitive environment, this leads to arbitrage and inefficient entry incentives, as companies try to interconnect at the most attractive rates. I support this Notice because it seeks comment on how we can make these varied intercarrier compensation regimes more consistent with each other and, thus, with competition.

Q. HOW DOES THE DISTINCTION BETWEEN "LOCAL" AND "TOLL TRAFFIC WITHIN A LATA AFFECT COMPETITION?

A. The distinction between "local" and "toll" calls is a purely artificial one that dictates what a competing carrier must pay for call termination – either excessive access rates or the much lower call termination rates. By requiring that all calls that originate and terminate within a LATA are subject to call termination charges rather than access charges, the Commission will be putting Verizon and AT&T on comparable footing with regard to the costs of terminating calls and, at the same time, will be pave the way for lower intraLATA toll prices and new service plans.

Q. ARE THERE ANY PHYSICAL DIFFERENCES IN THE WAY INTRALATA "LOCAL' AND "TOLL" CALLS ARE ROUTED OR HANDLED?

A. No. In their capacity as local exchange carriers, both AT&T and Verizon originate calls on their respective networks that must be terminated to the other carrier's network. AT&T and Verizon deliver all intraLATA traffic -- local or toll -- over the same trunk groups. From where a customer originates a call should be

[20] *Re: Notice of Proposed Rulemaking, Developing a Unified Intercarrier Compensation Regime,*

immaterial to the rates either carrier will charge the other for the termination of that call. Therefore, all calls originated on either carrier's network should be governed by the rates for transport and termination that are meant to apply between competing local exchange carriers.

Q. DOES VERIZON'S INSISTENCE THAT INTRALATA CALLS BE SEGREGATED INTO "LOCAL" AND "TOLL" LEAD TO HIGHER ADMINISTRATIVE COSTS?

A. Yes. Verizon's position increases the administrative costs associated with transport and termination. Today each carrier incurs costs to track the originating point of every call so that it can be reconciled in the billing settlement process as either "local" or "toll." That distinction will not be necessary with a unified compensation mechanism. Moreover, going forward, the change AT&T advocates will reduce the costs of changing calling plans from "toll" to "local" because such changes would not require changes in the way terminating calls are tracked.

SUB-ISSUE V.4.A and ISSUE V.3[21] Should reciprocal compensation provisions apply between AT&T and Verizon for all traffic originating from UNE-P customers of AT&T and terminating to other retail customers in the same LATA, and for all traffic terminating to AT&T UNE-P customers originated by other retail customers in the same LATA?

CC Docket No. 01-92 (April 19, 2001).

[21] Issues V.4.A and V.3 are identical and were separately stated in AT&T's Petition in error.

Q. PLEASE EXPLAIN HOW AT&T'S PROPOSAL WITH RESPECT TO COMPENSATION FOR INTRALATA CALLS TO AND FROM AT&T'S UNE-P CUSTOMERS DIFFERS FROM THE BROADER ISSUE OF CALL COMPENSATION DISCUSSED IN ISSUE V.4, ABOVE.

A. This issue is related to the proposal for a unified reciprocal compensation regime discussed above, but is a narrow subset of the broader issue. Under AT&T's proposal, all AT&T UNE-P local and intraLATA traffic originating, terminating and transiting over Verizon's network should be treated in exactly the same manner as Verizon treats its own comparable traffic. AT&T should not pay access charges because the call never touches AT&T's network. Rather, such calls should be compensated under a reciprocal compensation regime.

Q. WHAT IS AT&T'S PROPOSAL WITH RESPECT TO TRANSIT TRAFFIC COMPENSATION?

A. Verizon should treat UNE-P-based calls to and from third party CLECs as its own traffic for the purpose of setting reciprocal compensation obligations. This proposal simplifies "transit traffic" compensation arrangements. It eliminates the need for costly and time-consuming processes to negotiate and manage multiple interconnection agreements among all local service providers in Verizon's territory. For Verizon, this approach also eliminates the requirement that Verizon act as a clearinghouse for the creation and exchange of message records among the various CLECs operating in its territory, thereby relieving Verizon of the costs of maintaining that service.

Q. WOULDN'T VERIZON BE DEPRIVED OF COMPENSATION FOR TRANSIT TRAFFIC?

A. No. Verizon, through its agreements with the third parties, would obtain reciprocal compensation for carrying transit traffic. For traffic from AT&T's UNE-P customers, Verizon would collect reciprocal compensation from the third party as if it had originated the traffic for termination by the third party, although it did not. The collection of such charges compensates Verizon for the use of its network.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes it does.

I, Robert J Kirchberger hereby swear and affirm that the foregoing direct testimony was prepared by me or under my direct supervision or control and is true and accurate to the best of my knowledge and belief.

Signed:

Witness

State :
County :

I, Paula Phillips do hereby swear and affirm that Robert J Kirchberger appeared before me this 25th day of July, 2001.

Signed:

Notary

Notary Qualification Expires:

[Stamp or Seal]

Notary Public
State of New Jersey
PAULA PHILLIPS
My Appointment Ex. Sept. 19, 2004

Direct Testimony of Robert J. Kirchberger

AT&T Proposed Language Revisions

Add to section 1:

"ISP-bound Traffic" shall have the same meaning, when used in this Agreement, as is used in the FCC's Order on Remand and Report and Order in CC Docket Nos. 96-98 & 99-68, FCC 01-131, released April 27, 2001 (ISP Remand Order).

Add to section 5:

1. This section is intended to implement the ISP Remand Order for any period in which the ISP Remand Order is effective during the Term of this Agreement. The Parties agree to compensate each other for delivering ISP-bound traffic and section 251(b)(5) traffic in accordance with the terms and conditions of this section and section 5.7. For purposes of this section, ISP-bound traffic and section 251(b)(5) Local Traffic shall be identified in accordance with the provisions of section 2 below.

2. Compensation for ISP-bound Traffic

2.1. All Local Traffic that is terminated by one Party for the other Party pursuant to this Agreement within any calendar quarter in excess of an amount (measured by total minutes of use) that is three times the traffic that is terminated by the other Party pursuant to this Agreement shall be conclusively defined as ISP-bound Traffic. All other Local Traffic that is exchanged between the Parties shall be conclusively defined as any call that would be considered a local call ("Voice Traffic").

2.2. All Voice Traffic and all ISP-bound Traffic that is exchanged pursuant to this Agreement shall be compensated as follows:

2.2.1. All Voice Traffic that is exchanged pursuant to this Agreement shall be compensated pursuant to Exhibit A.

2.2.2. All ISP-bound Traffic that is exchanged pursuant to this Agreement shall be compensated as follows:

(a) Commencing on the effective date of this Agreement and continuing until December 13, 2001, $.0015 per minute of use.

(b) Commencing on December 14, 2001 and continuing until June 13, 2003, $.0010 per minute of use.

(c) Commencing on June 14, 2003, $.0007 per minute of use. To the extent that the FCC has not taken further action with respect to inter-carrier compensation for ISP-bound Traffic by June 14, 2004 and this Agreement remains in effect after June 14, 2004, the Parties agree that the rate of $.0007 per minute of use for ISP-bound Traffic shall remain applicable for such period.

(d) No charges shall apply to the carriage (including transport and termination) of Voice Traffic and ISP-bound Traffic by either Party for the other Party except as set forth above.

2.2.3. The rates described in Section 2.2.2. above shall apply only if: (a) Verizon requests that ISP-bound Traffic be treated at the rates specified in the ISP Remand Order; (b) Verizon offers to exchange all traffic subject to the reciprocal compensation provisions of section 251(b)(5) with LECs, CLECs, and CMRS providers at these rates; and (c) Verizon has paid all past due amounts owed to AT&T for the delivery of ISP-bound Traffic prior to June 14, 2001. If Verizon does not comply with these conditions, then the rate for the delivery of ISP-bound Traffic shall be the rate for the delivery of Voice Traffic.

2.3. The ability of either Party to receive compensation for ISP-bound Traffic shall be limited as follows based on "growth caps" on compensation for ISP-bound Traffic consistent with the ISP Remand Order. The Parties shall first determine the total number of minutes of use of ISP-bound Traffic (as defined in Section 2.1 above) terminated by one Party for the other Party for the three-month period commencing January 1, 2001 and ending March 31, 2001. The Parties shall then multiply this number of minutes by 4.4, and the resulting product shall be the terminating Party's "2001 ISP-bound Annualized Traffic Cap." The total number of minutes of use of ISP-bound Traffic for which one Party may receive compensation from the other Party during the period July 1, 2001 through December 31, 2001 shall equal 50% of that Party's 2001 ISP-bound Annualized Traffic Cap. The total number of minutes of use of ISP-bound Traffic for which one Party may receive compensation from the other Party during the period January 1, 2002 through December 31, 2002 or for any calendar year thereafter shall equal 1.1 times that Party's 2001 ISP-bound Annualized Traffic Cap. Neither Party may refuse to pay compensation for ISP-bound Traffic to the other Party based on the application of the foregoing "growth caps" until the aggregate amount of ISP-bound Traffic billed by the other Party for a specific calendar year exceeds the applicable maximum number of minutes of use of ISP-bound Traffic that may be compensated pursuant to this Section 2.3 for the entire year (beginning in calendar year 2002) or applicable portion thereof (for calendar year 2001).

2.4. The Party's shall bill each other for Voice Traffic and ISP-bound Traffic each month on the following basis:

2.4.1. For the period commencing on the effective date of this Agreement and continuing through September 30, 2001, each Party shall bill the other Party for Voice Traffic and ISP-bound Traffic based on the relative percentage of minutes of use of total combined Voice Traffic and ISP-bound Traffic represented by each type of traffic during the two-month period ending on May 31, 2001. For example, if Verizon terminated 100 minutes for AT&T during the two-month period ending on May 31 and AT&T terminated 500 minutes for Verizon during that period, the proportion of traffic terminated by AT&T would be 60% Voice Traffic [(3 x 100) / 500] and 40% ISP-bound Traffic [(500 – (3 x 100)) / 500], and for the period through September 30, 2001, AT&T would bill 60% of its total minutes of use billed for each month (or portion thereof) at the rate applicable to Voice Traffic and 40% of its total minutes of use at the rate applicable to ISP-bound Traffic.

2.4.2. For each calendar quarter commencing with the fourth quarter of 2001, each Party shall bill the other Party for Voice Traffic and ISP-bound Traffic based on the relative percentage of minutes of use of total combined Voice Traffic and ISP-bound Traffic represented by each type of traffic during the first two months of the immediately preceding calendar quarter. For example, if Verizon terminated 100 minutes for AT&T during the period July 1, 2001 through August 31, 2001, and AT&T terminated 500 minutes for Verizon during that period, the proportion of traffic terminated by AT&T would be 60% Voice Traffic [(3 x 100) / 500] and 40% ISP-bound Traffic [(500 – (3 x 100)) / 500], and for the period October 1, 2001 through December 31, 2001, AT&T would bill 60% of its total minutes of use billed for each month (or portion thereof) at the rate applicable to Voice Traffic and 40% of its total minutes of use at the rate applicable to ISP-bound Traffic.

2.4.3. Verizon will calculate the factors to be used for the relative percentage of minutes of use of total combined Voice Traffic and ISP-bound Traffic represented by each type of traffic during periods referred to in Sections 2.4.1 and 2.4.2 above, and Verizon will notify AT&T of such factors in writing by no later than the first day of the period during which such factors will be used. Such factors will govern all billing during the applicable period, and the Parties will not true up any billing for prior periods based on actual balance of traffic during such period. However, AT&T may audit Verizon's factors as provided in Section 2.5 below, and the Parties will true up billing for any period to the extent the factors applicable to such period were incorrectly calculated.

2.4.4. If a Party is terminating both Voice Traffic and ISP-bound Traffic for the other Party, that Party may bill all such traffic at a blended rate based on the weighted average of the rates applicable to Voice Traffic and the rates applicable to ISP-bound Traffic, using the factors specified in Section 2.4.3 above. In the event that AT&T is delivering both Voice Traffic and ISP-bound Traffic to Verizon, and Verizon does not provide factors to AT&T, including minute counts used to determine what portion of AT&T's traffic constitutes "Voice Traffic" and what traffic constitutes "ISP-bound Traffic," by the first day of the period during which such factors will be used, AT&T shall bill Verizon for all traffic during such period at the rate applicable to Voice Traffic.

2.4.5. AT&T shall have the right to audit factors provided by Verizon pursuant to Section 2.4.3 above and Verizon bills relating to settlements pursuant to this Section, as specified in Section 28.10 (Audits), including the right to audit the number of minutes of use terminated by Verizon for AT&T during any period to the extent such information may affect the volume of traffic that is considered to be Voice Traffic or ISP-bound Traffic under this Agreement. Each Party shall bear its own expenses associated with such audits (provided, however, that AT&T may seek reimbursement from Verizon in the event that an audit finds that an adjustment should be made in the charges that AT&T is entitled to collect from Verizon for reciprocal compensation by an amount that is greater than two percent (2%) of the aggregate charges for reciprocal compensation that had been billed in the audited period).

2.5. The Parties have entered into this Agreement providing for differential compensation of Voice Traffic and ISP-bound Traffic based on the ISP Remand Order, which is on appeal to the United States Circuit Court of Appeals for the District of Columbia Circuit. Without waiving any of their rights to assert and pursue their positions on issues related to compensation for Voice Traffic and ISP-bound Traffic, each Party agrees that until the ISP Remand Order is stayed or reversed or modified on appeal, the Parties shall exchange and compensate each other for Voice Traffic and ISP-bound Traffic on the terms and conditions provided herein. At such time as the ISP Remand Order is stayed, reversed or modified, then (1) ISP-bound traffic shall be deemed Local Traffic retroactive to the effective date of this Agreement; (2) any compensation that would have been due under this Agreement since its effective date for the exchange of ISP-bound traffic shall immediately be due and payable; and (3) the Parties shall immediately begin the exchange of ISP-bound traffic that was subject to the ISP Remand Order on the same terms, conditions, and rates as they exchange section 251(b)(5) traffic.

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JUL 31 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Petition of AT&T Communications	)	CC Docket No. 00-251
of Virginia, Inc., Pursuant	)	
to Section 252(e)(5) of the Communications Act,	)	
for Preemption	)	
of the Jurisdiction of the Virginia	)	
State Corporation Commission	)	
Regarding Interconnection Disputes	)	
with Verizon-Virginia, Inc.	)	
	)	

DIRECT TESTIMONY OF
E. CHRISTOPHER NURSE
ON BEHALF OF AT&T[1]

ISSUES ADDRESSED	
Issue I.3	Does AT&T have an obligation to provide Verizon with collocation pursuant to Section 251(c)(6) of the Telecommunications Act of 1996?
Issue III.12	Does Verizon have the obligation to make unused transmission media (*i.e.,* spare conductors) available to AT&T and, if so, how is that obligation fulfilled?

JULY 31, 2001

[1] This Affidavit is presented on behalf of AT&T Communications of Virginia, Inc., TCG Virginia, Inc., ACC National Telecom Corp., MediaOne of Virginia and MediaOne Telecommunications of Virginia, Inc. (together, "AT&T").

Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.

A. My name is E. Christopher Nurse. I am District Manager of Government Affairs for AT&T. My business address is 3033 Chain Bridge Road, Oakton, Virginia 22185.

Q. PLEASE DESCRIBE YOUR EXPERIENCE AND QUALIFICATIONS.

A. I received a B.A. in Economics from the University of Massachusetts at Amherst. In 1996, I received a Masters in Business Administration from the Graduate School of Business at Southern New Hampshire University. Previously I held the position of Manager of Regulatory and External Affairs for AT&T Local Services. I have testified before numerous state commissions on behalf of AT&T, including a Declaration before the Federal Communications Commission in the Pennsylvania 271 proceeding.

Prior to joining AT&T, I was employed in the same capacity by Teleport Communications Group, Inc., beginning in February 1997.[1] Prior to that time, I was a telecommunications analyst with the New Hampshire Public Utilities Commission, from 1991 to February 1997. I was assigned to the Engineering Department and was entrusted with a broad range of responsibilities in telecommunications. From 1981 to 1991, I held positions of increasing responsibility in installation, maintenance and repair, construction, operations, and engineering with a number of cable television operators, including predecessors of AT&T Broadband.

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1 Effective July 24, 1998, Teleport Communications Group and its subsidiaries became wholly owned subsidiaries of AT&T Corp.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY AND WHAT ISSUES DO YOU ADDRESS?

A. My testimony will show that there is no obligation for AT&T to provide collocation to Verizon in a similar manner to that which obligates Verizon to provide AT&T with collocation. This issue is identified as I.3. I will also show that AT&T's proposed interconnection agreement provisions involving access to unbundled dark fiber are reasonable, non-discriminatory and appropriate. I will demonstrate that AT&T has properly sought the type of efficient and practical access to dark fiber that will facilitate its ability to compete in the provision of local exchange service within the operating territory of Verizon in Virginia. In contrast, I will identify aspects of the Verizon contract language that impose costly and restrictive terms on such access. These issues are identified in AT&T's petition for arbitration as Issue III-12.

ISSUE I.3	**Does AT&T have an obligation to provide Verizon with collocation pursuant to Section 251(c)(6) of the Telecommunications Act of 1996?**

Q. DOES AT&T HAVE AN OBLIGATION TO PROVIDE VERIZON WITH COLLOCATION PURSUANT TO SECTION 251(C)(6) OF THE TELECOMMUNICATIONS ACT OF 1996?

A. No. AT&T, as a competitive local exchange carrier, is not obligated to offer collocation under Section 251(c)(6) of the Telecommunications Act of 1996 ("Act"). Although it has no legal obligation to do so, AT&T has voluntarily entered into "space licenses" with Verizon or its affiliates at various AT&T locations. AT&T will continue to entertain requests for such licenses where adequate space is available and all when other necessary conditions are satisfied.

Q. WHAT COLLOCATION OBLIGATIONS DOES THE ACT IMPOSE ON INCUMBENT CARRIERS SUCH AS VERIZON?

A. Section 251(c)(6) of the Act imposes on *incumbent* local exchange carriers, such as Verizon, "the duty to provide, on rates, terms and conditions that are just, reasonable and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements. . . ."

Q. DOES THE "OBLIGATION" TO COLLOCATE EXTEND TO CLECS SUCH AS AT&T?

A. No. *Non-incumbent* carriers, *i.e.,* competitive local exchange carriers, such as AT&T, have no obligation to provide collocation to other carriers – nor can such an obligation lawfully be imposed on CLECs.[2] Accordingly, Verizon cannot demand that AT&T provide collocation pursuant to Section 251(c)(6). The Act is unambiguous on this point. If Congress had intended that CLECs should be subject to collocation obligations, it simply would have included collocation obligations under § 251(b), which delineates the duties of *all* carriers (both incumbents and competitive LECs). While the Act imposes certain, but fewer, obligations on "all local exchange carrier" in § 251(b), collocation is not one of those obligations.

Q. MAY AT&T *VOLUNTARILY* PROVIDE SPACE TO VERIZON AT AN AT&T LOCATION?

A. Yes. At its own discretion, AT&T may license Verizon to locate equipment at an AT&T location and to use AT&T's support services (*e.g.,* power, heating ventilation, air conditioning and security for the equipment) for the purpose of

[2] Section 251(c) states, in part, "*Additional Obligations of **Incumbent** Local Exchange Carriers. . .*" (Bold added). Clearly, the imperative to provide collocation only applies to ILECs.

delivering traffic to AT&T for completion or other purposes. This type of licensing arrangement is strictly discretionary on AT&T's part, and as such, could not be compelled or required under § 251(c)(6).

Q. HAVE AT&T AND VERIZON EVER ENTERED INTO A VOLUNTARY SPACE LICENSE AGREEMENT?

A. Yes, AT&T and one of Verizon's affiliates, Bell Atlantic Network Services, have entered into a space license agreement covering various AT&T locations.

Q. HAS VERIZON ACKNOWLEGED THAT A CLEC IS NOT OBLIGATED UNDER THE ACT TO PROVIDE SPACE TO VERIZON?

A. Yes. The *voluntary* nature of this relationship is irrefutably illustrated through Bell Atlantic-Virginia, Inc.'s 1997 Interconnection Agreement with TCG. In this contract, which was, of course, approved by the Virginia State Corporation Commission, TCG specifically agrees to offer Verizon collocation but both parties expressly acknowledged that TCG was "not required to do so by § 251(c)(6) of the Act."[3]

Q. IS AT&T STILL WILLING TO PROVIDE SPACE LICENSE AGREEMENTS TO VERIZON AT ITS VIRGINIA FACILITIES?

A. Yes. AT&T is willing to negotiate appropriate space licenses that would allow Verizon and other carriers to locate specified equipment at certain AT&T locations. The determination of whether a space license arrangement can be negotiated at a particular AT&T location, however, is wholly within AT&T's discretion, and dependent upon whether sufficient space is available and whether all other applicable conditions are satisfied.

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3 Interconnection Agreement Under §§ 251 and 252 of the Telecommunications Act of 1996 by and between Bell Atlantic-Virginia, Inc. and TCG Virginia, Inc., dated February 3, 1997, approved May 30, 1997, § 13.2.

ISSUE III.12 Does Verizon have the obligation to make unused transmission media (*i.e.,* spare conductors) available to AT&T and, if so, how is that obligation fulfilled?

Q. WOULD YOU PLEASE SUMMARIZE AT&T'S POSITION CONCERNING ACCESS TO VERIZON'S DARK FIBER?

A. Verizon is obligated to make unused transmission media, such as dark fiber cable, available to AT&T in the same manner as it is able to utilize such fiber itself, on nondiscriminatory terms and conditions, at technically feasible points—including at the regenerator or optical amplifier equipment and at splice points. Access should not be limited, as Verizon maintains, only to hard termination points. CLECs should be able to have access to and reserve use of available dark fiber consistent with reasonable business practices. Verizon should be required to provide AT&T with dark fiber that conforms to industry standards for transmission quality, just as it does with UNE loops, and for similar reasoning.

Q. HOW DOES VERIZON PROPOSE TO MEET THAT OBLIGATION?

A. Verizon proposes to meet its obligation by imposing restrictive limitations on the types of fiber to which it is willing to provide access and by limiting even that access to only certain points.

Q. DOES VERIZON'S OBLIGATION APPLY TO ONLY A PARTICULAR TYPE OR TECHNOLOGY OF TRANSMISSION CONDUCTOR (*E.G.,* FIBER)?

A. No. The UNE Remand Order does not limit an ILEC's unbundling obligation to only a particular transmission conductor type/technology. In fact, the FCC has